

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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NEW WORLD INVESTMENTS, LLC,

Plaintiff,

VS.

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, *et al.*

## Defendants.

And all related matters.

Case No. 2:17-cv-02550-GMN-VCF

## ORDER

MOTION FOR LEAVE TO FILE AMENDED ANSWER  
AND COUNTERCLAIM [ECF No. 23]

Before the Court is Defendant Deutsche Bank National Trust Company's Motion for Leave to File Amended Answer and Counterclaim. (ECF No. 23). For the reasons stated below, Defendant's motion is granted.

## BACKGROUND

This case involves a dispute over potential competing interests in property that was subject to an HOA foreclosure sale. (ECF No. 1-2). Defendant filed an answer and counterclaim to the complaint on October 6, 2017. (ECF No. 10). Defendant named Atrium Gardens Home Owners Association “HOA” and Hampton & Hampton Collections LLC (“HOA Trustee”) as counter-defendants and brought quiet title/declaratory relief and unjust enrichment claims against them. (*Id.* at 9-10, 18-24).

The parties submitted a joint discovery plan stating that the deadline to file a motion to amend pleadings would be February 13, 2018. (ECF No. 22 at 3). The Court did sign the proposed plan, apparently due to an oversight. The Court has since entered a scheduling order in this case. (ECF No. 30).

1 On February 13, 2018, Defendant filed a motion to amend its answer and counterclaim. (ECF No.  
2 23). Defendant seeks to add negligence, negligence per se, breach of contract, misrepresentation, breach  
3 of the covenant of good faith and fair dealing, and wrongful/defective foreclosure claims against the HOA  
4 and HOA Trustee. (ECF No. 23-1 at 24-29). These claims were not originally included in the answer and  
5 counterclaims because state law requires them to be first be submitted to mediation with Nevada's  
6 Department of Business and Industry, Real Estate Division. (ECF No. 23 at 2). The mediation matter  
7 was closed on February 26, 2018. (ECF No. 25). Neither the HOA nor the HOA Trustee filed an  
8 opposition to Defendant's motion to amend.

9 **DISCUSSION**

10 “[A] party may amend its pleading only with the opposing party's written consent or the court's  
11 leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Five factors  
12 are taken into account to assess the propriety of a motion for leave to amend: bad faith, undue delay,  
13 prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended  
14 the complaint.” *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). In addition, under LR 7-2(d),  
15 “[t]he failure of an opposing party to file points and authorities in response to any motion...constitutes a  
16 consent to the granting of the motion.”

18 Because the HOA and HOA Trustee did not file an opposition to Defendant's motion, they have  
19 consented to the Court granting the motion. The Court also finds grounds to grant Defendant leave to  
20 amend the answer and counterclaim. There is no apparent bad faith or undue delay in the motion for leave  
21 to amend. Defendant filed the motion within the timeframe specified in the proposed scheduling order  
22 while waiting for the mediation to close. The amendments do not appear to prejudice the HOA and HOA  
23

1 Trustee.<sup>1</sup> They were listed in the original answer and counterclaim as counter-defendants. Though  
2 Defendant is adding claims against the HOA and HOA trustee, the claims significantly overlap with the  
3 facts and legal theories stated in the original answer and counterclaim. Defendant's amendments do not  
4 appear to be futile, and this is Defendant's first motion for leave to amend the answer and counterclaim.

5 ACCORDINGLY, and for good cause shown,

6 IT IS ORDERED that Defendant's Motion for Leave to File Amended Answer and Counterclaim  
7 (ECF No. 23) is GRANTED.

8 IT IS FURTHER ORDERED that Bright has until May 23, 2018 to file the amended answer and  
9 counterclaim.

10 IT IS SO ORDERED.

11 DATED this 16th day of May, 2018.



13  
14 CAM FERENBACH  
15 UNITED STATES MAGISTRATE JUDGE  
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25 <sup>1</sup> The Court notes that the HOA filed an answer to Defendant's counterclaim on April 5, 2018, after Defendant filed its motion to amend. (ECF No. 26).